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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 9TH OCTOBER 2007 / 17TH ASWINA 1929

Crl.Rev.Pet.No. 3451 of 2007(B)

SC.694/2005 of SESSIONS COURT, THRISSUR
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REVN. PETITIONER: DEFACTO COMPLAINANT

USHA, AGED 42 YEARS, W/O. RAVEENDRANATH,
VELLEPPARAMBIL VEEDU, P.O.ENGINEERING COLLEGE,
THRISSUR.

BY ADV. SRI.P.VIJAYA BHANU
SRI.PRASUN.S

RESPONDENTS: ACCUSED AND STATE
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1. INDIRA, AGED 43 YEARS, D/O. V.K.RAMAN NAIR,
V.K.R. HOUSE, MEZHATHUR, THRITHALA VILLAGE,
PALAKKAD.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. K.S. SIVAKUMAR, PUBLIC PROSECUTOR
SRI.JIJO PAUL

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 09/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

"CR"

V.RAMKUMAR, J.

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Crl.R.P. No. 3451 of 2007

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Dated this the 9th day of October, 2007

O R D E R

The revision petitioner, who is a lady by name Usha is the de facto complainant in Crime No. 7/2005 of Viyyur Police Station for an offence under Section 3(1)(x) of the Schedule Caste Scheduled Tribe (Prevention of Atrocities) Act, 1989.

2. The case of the revision petitioner is that she, who is working as programme executive in All India Radio(Akasavani), was insulted by calling her caste name by the accused who is also a lady and employed as programme executive in the All India Radio and the accused thereby committed offence under Section 3(1)(x) of the said Act. After investigation, the DYSP, Thrissur filed a charge sheet before Judicial First Class Magistrate-I, Thrissur. The said Magistrate took cognizance of the offence and registered the case as C.P.14/2005. After completing the committal proceedings and complying with Section 207 Cr.P.C, the Magistate committed the case to the Court of Session in

exercise of his power under Section 209 Cr.P.C. The case was registered as Sessions Case No.694/2005 before the Principal Sessions Court, Thrissur which is the special court under the aforesaid Act. While so, the accused moved the Superintendent of Police, Thrissur for further investigation. Accordingly, the Superintendent of Police, Thrissur ordered the DYSP to conduct further investigation under Section 173(8) Cr.P.C. After seeking permission from the trial court, he conducted further investigation and filed a supplementary report in the form of a refer report to the effect that the case was a false case. Upon receipt of notice of the refer report, the revision petitioner/de facto complainant appeared before the Sessions Court and submitted that the further investigation allegedly conducted was false and mala fide and requested the court to take cognizance of the offence by referring to the materials on record. That court however, as per the impugned order dated 25.07.2007 treated the sessions case as closed and discharged the accused holding that that was the only course open to that court. It is the said order which is assailed in this revision.

3. Even though the 1st respondent/accused was duly served, she has not chosen to enter appearance in this revision.

4. I heard the learned counsel for the revision petitioner and learned Public Prosecutor.

5. The learned counsel for the revision petitioner submitted that the statement in the supplementary report filed by the DYSP after further investigation, that the accused was an in-patient in a hospital and the complainant was on duty on the alleged date of occurrence, is false and that there was sufficient material before the court to take cognizance of the offence.

6. If there is material before the court for taking cognizance of the offence, then merely because the police have chosen to file a refer report, may not preclude the court from taking cognizance of the offence which is disclosed by the material produced along with the report. In a case where a refer report is filed before the court, the court has three options. The first option is to accept the refer report and drop the proceedings. The second option is to disagree with the refer report filed by the police and take cognizance of the offence which has been made

out as per the documents or material produced by the police. The third option is to order further investigation. [See 1988(1) KLT 924 **(State v. Gopakumar)**, 2001(7) SCC 536 (**Hemant Thasmana v. CBI** and 2006(2) KLT 588(SC)(**Minu Kumari v. State of Bihar)**]. The third option referred to above however does not apply to this case since the refer report was filed after further investigation under Section 173(8) Cr.P.C. In any view of the matter, the Special Court which is a Court of Session is bound to examine the materials produced along with the refer report as well as the original report under Section 173(2) Cr.P.C. particularly when that court had taken cognizance of the offence on the final report filed earlier under Section 173(2) Cr.P.C. The filing of a protest complaint is not necessary for the Court to take cognizance of the offence. Even if the Court accepts the refer report and discharges the accused, that will not preclude the complainant from filing a protest complaint thereafter nor will it debar the Magistrate from taking cognizance of the offence on the protest complaint. (vide paragraph 12 in Mahesh Chand v. B. Janardhan Reddy-2003(1) SCC 734 and paragraph 3 in Kishore

Kumar Gyanchandani v. G.D Mehothra -AIR 2002 SC 483). But the view taken by the Sessions Judge that in view of the refer report filed by the police after further investigation, the only course available to the Sessions Judge is to treat the sessions case as closed and discharge the accused, is erroneous for the reasons already stated above. Hence, the order dated 25.07.2007 passed by the Sessions Court is set aside and the matter will stand remitted to that court for a disposal of the sessions case in accordance with law. It shall be open to the revision petitioner/complainant to make her submissions in support of her contentions or to file a protest complaint before the Sessions Court.

The revision petition is disposed of as above.

V. RAMKUMAR, JUDGE.

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